

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA

v.

07 Cr. 543 (CLB)

YEHEZKEL ELIA and  
DAVID ELYAHO

Defendants.

**AFFIDAVIT OF  
JAY GENUTH**

-----X

STATE OF NEW YORK )  
COUNTY OF WESTCHESTER )  
SOUTHERN DISTRICT OF NEW YORK ) ss:

Jay Genuth, under penalties of perjury, deposes and states as follows:

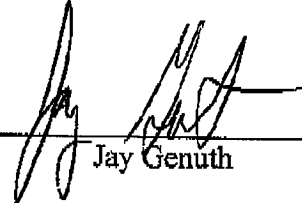
1. I am a certified public accountant and am employed by Bernard Katz & Co., CPA, P.C. in Eastchester, New York. I make this Affidavit in further support of defendant Elia's motion to suppress evidence.
2. As part of the discovery material provided by the government, we possess a copy of a Fax cover sheet from Special Agent Eis to Ms. Laura Carnero of Schwab, dated 10/31/03, requesting copies of the deposited items. Attached to the Fax cover sheet are 16 pages from Schwab monthly statements. The Schwab account is titled "Samyr Elia, Sneakermania Inc, Attn: Yehezkel Elia". Samyr Elia is Yehezkel Elia's brother and resides outside of the United States. Attached hereto as Exhibit A is a copy of the Fax cover sheet and the first page of the 16 page attachment. Apparently, Mr. Eis already possessed the Schwab statements as of October 31, 2003.

3. As part of the discovery material provided by the government, we found a copy of Ms. Carnero's December 11, 2003 response, attached hereto as Exhibit B, together with the copies of the requested deposited items. I compared these deposited items to the statements and determined that there were no cash deposits. Apparently, Mr. Eis was aware in December, 2003 (two months before the date of his affidavit in support of the search warrant) that no cash was deposited to the account. These documents absolutely contradict the allegations attributed to the C.I. in paragraph 13 of Mr. Eis' affidavit in support of the search warrant, that "...much of the cash went towards Elia's personal use. For example, according to the CI, Elia held a brokerage account at Charles Schwab that was in the name of a brother, Samyr Elia, but over which Elia is the signator."

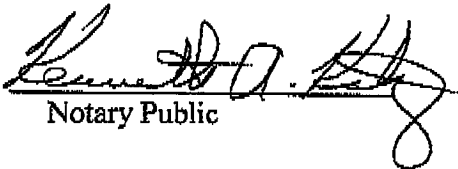
4. Attached hereto as Exhibit C, is a summary prepared by me, of the deposits to the Schwab account. All deposits are accounted for; no cash was deposited.

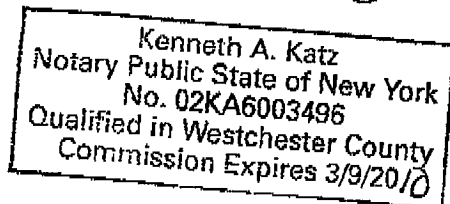
5. In connection with my work for Mr. Elia and his sneaker and clothing companies, records of purchases were obtained from certain vendors. I prepared the attached Exhibit D, which is a comparison of the accounts payable records prepared by the CI (paragraph 19 of the Eis affidavit) to the purchase records provided by the vendors. Exhibit D shows that there were 39% more purchases than were recorded in the CI's records. It is apparent that significant purchases were omitted from the CI's records, which Mr. Eis accepted as complete, without any apparent attempted verification by him. I had no difficulty obtaining the vendor records acquired thus far. We are in the process of acquiring records from additional vendors, which we believe will establish significant additional purchases omitted from the CI's records.

6. In late July, 2007, I attended a meeting at the United States Attorney's Office to inspect government discovery. While I was inspecting the discovery, Special Agent Longo was informed that income from Dynasty was reported on the income tax returns of Sneakermania. Special Agent Longo informed us that he was aware of that fact.

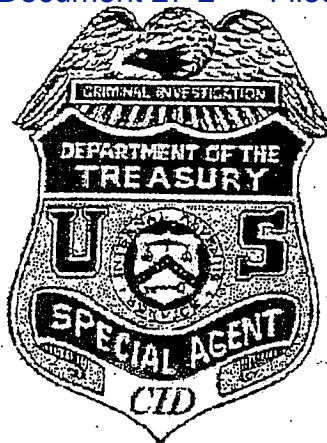
  
Jay Genuth

Sworn to before me this 7<sup>th</sup>  
day of February, 2008

  
Notary Public



## **Exhibit A**



**CRIMINAL INVESTIGATION  
NEW YORK FIELD OFFICE**

**210 East Post Road  
White Plains, NY 10601  
GROUP 1304  
FAX Number: 914 684-7183**

**Date: 10/31/03**

**Number of Pages(Including Cover) 17**

**Destination: Charles Schwab- 415-636-5263**

**To: Laura Carnero**

**From: Herbert Eis Special Agent**

**Telephone Number: 914 684-7200**

**Remarks:**

Enclosed are the statements which reflect the "Funds Received " transactions.

Please obtain copies of the deposited items for these transactions.

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The information contained in this facsimile message and any and all accompanying documents, constitute confidential information. This information is the property of the U.S. Government. If you are not the intended recipient of this information, any disclosure, copying, distribution, or taking of any action in reliance on this information is strictly prohibited. If you received this information in error, please notify us immediately by telephone at the above number and destroy the information.

11 7104- Left VM- No Response to Fax Request

**Charles Schwab**

SCHWAB ONE ACCOUNT

**Statement**

ACCOUNT NUMBER	PERIOD COVERED	LAST STATEMENT	PAGE
WP 2311-9869	JUL 1 - JUL 31 2000		1

TITLE OF ACCOUNT	OFFICE SERVING YOUR ACCOUNT
------------------	-----------------------------

SAMYR ELIA  
SNEAKER MANIA INC.  
6 XAVIER DR..  
ATT: YEHEZKEL ELIA  
YONKERS NY 10704

50 MAIN STREET, STE 274  
WHITE PLAINS, NY  
\*\*MAIL TO: PO BOX 628291  
ORLANDO, FL 32862

\*\*\* FOR QUESTIONS ABOUT THIS STATEMENT: CALL 1-800-435-4000 \*\*\* ACCOUNT OPENED IN: 2000

STATUS OF KEY VALUES AS OF JUL 31 2000		ACCOUNT TRANSACTION SUMMARY	
Investments Owned	\$128,001.94	OPENING CASH BALANCE	\$0.00
Net Portfolio Value	\$128,001.94	Investment Income	\$150.74
Ending Cash Balance	\$87,478.27	Funds Received	\$19,961.00
TOTAL ACCOUNT VALUE	\$215,480.21	Other Credits	\$67,493.66
Checkwriting or VISA Limit	\$87,478.27	Total Credits	\$87,605.40
		Other Debits	(\$127.13)
		Total Debits	(\$127.13)
		ENDING CASH BALANCE	\$87,478.27

INVESTMENT INCOME SUMMARY			RATE SUMMARY AS OF 07/31	
SOURCE OF INCOME	CURRENT PERIOD	YEAR TO DATE	TEF Yield*	3.59%
FEDERALLY TAXABLE			STF Yield*	5.38%
Credit Interest Earned	\$150.74	\$150.74	Schwab 1 Yield	5.56%
			Margin Loan Rate	9.25%
			to 10.75%	

\* 7 Day Annualized Yield.  
Please see reverse for more information.

PORTFOLIO POSITION DETAIL						
CATEGORY	S T	LONG/ SHORT	QUOTE SYMBOL	QUANTITY	INVESTMENT DESCRIPTION	LATEST PRICE
STOCKS	C	Long	AOL	600	AMERICA ONLINE INC DEL	53.3125
	C	Long	IBM	500	INTL BUSINESS MACHINES	112.4375
	C	Long	MSFT	500	MICROSOFT CORP	69.8125
	C	Long	TCPI	7450	TECHNICAL CHEM & PRDCTS	.6563
Net Portfolio Value				\$128,001.94		

ACCOUNT TRANSACTION DETAIL					
DATE	TRANSACTION	QUANTITY	DESCRIPTION	PRICE	AMOUNT
****			Opening Cash Balance		\$0.00
07/06	Funds Received		FONDS RECEIVED *		\$18,611.00
07/06	Funds Received		FONDS RECEIVED		\$1,350.00
07/07	Billing Invoice		INVOICE 03166609 PAID		(\$100.00)
07/19	Account Transfer		TOA ACAT 0226		\$67,493.66
07/19	Account Transfer	600	AMERICA ONLINE INC DEL		
07/19	Account Transfer	500	INTL BUSINESS MACHINES		
07/19	Account Transfer	500	MICROSOFT CORP		

\*\*\* CONTINUED ON NEXT PAGE \*\*\*

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## **Exhibit B**

Office of Corporate Counsel  
101 Montgomery Street San Francisco CA 94104  
tel (415) 667 3232 fax (415) 636 5263

*charles* SCHWAB

December 11, 2003

VIA UPS

SPECIAL AGENT HERBERT EIS  
DEPARTMENT OF TREASURY - CI  
NY FIELD OFFICE, GROUP 1304  
210 EAST POST ROAD  
WHITE PLAINS, NY 10601

Re: Subpoena / Sneaker Mania, Inc. & Samyr Elia  
Charles Schwab Acct. 2311-9869

Dear Agent Eis:

Pursuant to the above matter enclosed are check copies for the above referenced account. Please note that this completes the production for these records.

Please feel free to contact me at (415) 636-3077 with any questions.

Sincerely,

*Laura Carnero*

Third Party Actions  
Office of Corporate Counsel

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## **Exhibit C**

Yehezkel Elia

Attorney Work Product

File Name: Schwab-2311-9869-2000-2003

Account # WP-2311-9869

Samyr, Elia

Sneaker Mania Inc

6 Xavier Dr Yonkers, NY 10704- ATTN: Yehezkel Elia

Missing Info - Account signature/application cards

## Per IRS Worksheet

Per Discovery Documents -  
In IRS Possession Prior to Subpoena

<u>Date</u>	<u>Transaction</u>	<u>Description</u>	<u>Amount Deposited</u>	<u>Payor</u>	<u>Bates #</u>
7/6/2000	Open account				
7/6/2000	Funds received	unknown source	\$ 18,611.00	David Gladstone Attorney	6625
7/6/2000	Funds received	unknown source	\$ 1,350.00	Lloyd Funding	6619
7/19/2000	Account transfer -from?	TOA ACAT 0226	\$ 67,493.66	fidelity acct 107-707533	6683
8/4/2000	Account transfer -from?	TOA ACAY 0226	\$ 158.64		
9/5/2000	Funds received	Wired Funds received	\$ 15,542.00		
9/7/2000	Funds received	Funds received	\$ 1,350.00	Lloyd Funding	7059
9/7/2000	Funds received	Funds received	\$ 1,350.00	Lloyd Funding	7060
9/7/2000	Account transfer	TOA ACAT 0226	\$ 0.02		
9/7/2000	Funds received	Travelers check received	\$ 50.00		
9/7/2000	Funds received	Travelers check received	\$ 100.00		
10/11/2000	Funds received	Cashiers check	\$ 10,000.00	Ravit Phillips (Citibank official ck)	6616
10/11/2000	Funds received	Funds received	\$ 1,350.00	Lloyd Funding	6615
10/11/2000	Funds received	Funds received	\$ 3,818.23	Samyr Elia fidelity	6614
10/11/2000	Returned Deposit	RET CK ACCT closed	\$ (3,818.23)		
10/20/2000	Account transfer	TOA ACAT 0026	\$ 3,818.23		
11/3/2000	Account transfer	to ACAT 0226	\$ 10.00		
			<u>\$121,183.60</u>		

Yehezkel Elia

Attorney Work Product

File Name: Schwab-2311-9869-2000-2003

Account # WP-2311-9869

Samyr, Elia

Sneaker Mania Inc

6 Xavier Dr Yonkers, NY 10704- ATTN: Yehezkel Elia

Missing Info - Account signature/application cards

## Account Analysis

Per Discovery Documents -  
In IRS Possession Prior to Subpoena

Date	Transaction	Description	Amount Deposited	Payor	Bates #
1/18/2001	Funds received		\$ 1,350.00	Lloyd Funding	7063
1/18/2001	Funds received		\$ 1,350.00	Lloyd Funding	6617
1/18/2001	Funds received		\$ 1,350.00	Lloyd Funding	6618
4/6/2001	Funds received	Funds received	\$ 1,000.00	Rachel/Joseph Pinkas	6612
4/6/2001	Funds received	Funds received	\$ 1,350.00	Lloyd Funding	
5/10/2001	Funds received	Funds received	\$ 7,532.00	38 Orchard St.	6600
5/10/2001	Funds received	Funds received	\$ 6,000.00	Izzy Franco	6623
5/10/2001	Funds received	Funds received	\$ 69.00	James Hull	6624
5/10/2001	Funds received	Travelers check received	\$ 100.00	US travelers check	6620
5/10/2001	Funds received	Travelers check received	\$ 100.00	US travelers check	6621
5/10/2001	Funds received	Travelers check received	\$ 100.00	US travelers check	6622
7/19/2001	Funds received	Cashiers check	\$ 10,000.00	Ravit Phillips (Citibank official ck)	6611
12/7/2001	Funds received	Funds received	\$ 15,000.00	38 Orchard St.	6602
12/7/2001	Funds received	Funds received	\$ 2,000.00	Rachel/Joseph Pinkas	6603
1/18/2002	Funds received	Govt check	\$ 37,000.00	U.S. Customs -	No Doc - BKCO guess
3/25/2002	Funds received	Funds received	\$ 1,500.00	All County Contractors (rent 84 W:	6605
3/25/2002	Funds received	Funds received	\$ 1,800.00	Joseph Pinkas	6604
4/2/2002	Returned Deposit	RET CK Stop pay	\$ (1,500.00)		
6/10/2002	Funds received	Funds received	\$ 300.00	32 Cedar Corp	6607
6/10/2002	Funds received	Funds received	\$ 2,979.21	Homeside lending	6606
8/15/2002	Funds received	Funds received	\$ 10,000.00	32 Cedar Corp	6609
8/15/2002	Funds received	Funds received	\$ 2,486.43	First American Title insurance	6608
			<u>\$101,866.60</u>		

Fidelity acct 107-707533 account in the name of Samyr Elia

Year bates number

6597-6651

6653-6670 H. Eis 10/31/03 request to Charles Schwab for funds received documentation (H. Eis followed up 1/4/04)

6671-6736 Charles Schwab 10/22/03 response to subpoena for account statements and documentation

6737-6740 IRS analysis

2000 6741-6752

2001 6753-6800

2002 6801-6852

## **Exhibit D**

Yehezkel Elia  
 Attorney Work Product  
 Comparison of Lily's Book to Vendor Statements  
 2002

<u>Name</u>	<u>Per Lily's Book</u>	<u>Per Vendor</u>	<u>Difference</u>	<u>% Lily's Book</u>
				<u>Understated</u> <u>Actual Per</u> <u>Vendor</u> <u>Statements</u>
Adidas	83,786.11	83,646.00	(140.11)	
Clarks	10,880.61	17,270.00	6,389.39	
G III	22,865.86	66,268.00	43,402.14	
Gold Medal	1,745.53	1,745.00	(0.53)	
Hadad	-	22,301.00	22,301.00	
Jack Schwartz Shoes (Lugz)	23,994.41	24,030.00	35.59	
K Swiss	23.90	37,975.00	37,951.10	
Majestic	81,088.35	136,087.00	54,998.65	
New Balance	72,251.69	72,284.00	32.31	
New Era	66,934.50	143,439.00	76,504.50	
Nike	853,083.82	1,115,462.00	262,378.18	
Nike Team	153,332.52	163,082.00	9,749.48	
Onfield	61,915.72	188,349.00	126,433.28	
Puma	52,309.51	59,869.00	7,559.49	
Reebok	98,629.60	126,596.00	27,966.40	
Russel Athletic	-	22,138.00	22,138.00	
Saucony	11,266.98	11,267.00	0.02	
Sketchers	13,648.99	21,628.00	7,979.01	
Timberland	311,375.95	363,551.00	52,175.05	
Totals	<u>1,919,134.05</u>	<u>2,676,987.00</u>	<u>757,852.95</u>	<u>39%</u>